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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,384	03/26/2001	Yuichi Shirota	P 276714	8374
27572	7590	11/20/2003	41069-USPD2C-JSJ	
HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303			EXAMINER FORD, JOHN K	
			ART UNIT	PAPER NUMBER

3753

DATE MAILED: 11/20/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

Applicant(s)

09/816,384

Shirota et al.

Examiner

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FORD

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on July 18, 2003
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2, 5, 6, 9-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2, 5, 6, 9-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 15
- 18) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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Applicants' response of July 18, 2003 has been studied carefully. Yet another IDS containing a reference (JP 59-77918) remarkably close to the subject matter added to claims 9 and 11 has been cited without any explanation as to where it came from or any discussion of how claims 9 and 11 define over it when viewed in combination with the other references. It has also been cited without a full translation even when handwritten annotations with Roman Numerals (i)-(vii) are clearly evident in the written portion of the specification of the copy provided to this Examiner. Based on past experience such detailed and meticulous handwritten notations are usually indicative of the reference evolving from some judicial or quasi-judicial proceeding in which at least those portions were translated for some deciding official.

The Examiner strongly suspects that some foreign counterpart of the current application or one of its predecessors is involved in litigation, most likely an infringement proceeding or an opposition proceeding somewhere in the world. If such is the case, MPEP 2001.06(c), requires that the existence of such litigation be brought to the attention of the USPTO. Pursuant to what is stated there the Examiner will need a translation of the claims that are being challenged in any such proceedings (including any amended claims) and a translation of the deciding official's decisions (including rejections, confirmations and allowances, however styled) on the patentability of those claims. If more than one set of claims has been presented in any such proceeding or litigation, and more than one decision on those claims rendered (either in the form of rejections or other holdings), then the Examiner will need translated copies of all of those materials so that decisions in this particular application are made consistent with and with full knowledge of the

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prior art and the actions of the patent offices/courts considering claims similar to those found here.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 5, 6 and 9-13 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention.

In claim 9, line 19, "hear" should be amended to -- heat --.

In claim 9, next to the last line, -- substantially -- should be inserted before "vertical".

In claim 11, third line before the last line, -- substantially -- should be inserted before "vertical".

Support for the word "substantially" is found in paragraph 164 of the specification. These changes are otherwise self-explanatory.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 5, 6 and 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP vertical axis and air inside/outside changeover assembly above the blower fan 6-156049 in view of (newly cited, untranslated) JP 59-77918 and DT '451 (Figures 5 and 6) or Nagao et al.

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JP '049 shows all of the claimed features with the exception of an offset blower having a vertical axis and air inside/outside changeover assembly above the blower fan and corrugated fins between each of the tubes in the evaporator core 26.

As to the first deficiency, (newly cited, untranslated) JP 59-77918 teaches an offset blower having a vertical axis and air inside/outside changeover assembly above the blower fan (or so it would appear from the drawings). Applicant must provide at least a translation of the handwritten annotations with Roman Numerals (i)-(vii) are clearly evident in the written portion of the specification of the copy to this Examiner if they constitute the disclosure relevant to an offset blower having a vertical axis and air inside/outside changeover assembly above the blower fan. Such an offset blower and associated vertical axis and air inside/outside changeover assembly above the blower fan would have been obvious to have used because it advantageously reduces the amount of vertical installation space and would make the unit adaptable for mounting in vehicles (such as a conventional "compact" automobile) which do not have as much vertical space for installation as disclosed in JP '049 (which appears to have a very large amount of vertical space between the floor 20 and the dashboard 66).

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DT '451 (Fig. 6 and Fig. 5) teaches tubes 37 with serpentine fins between them (Fig. 5) aligned at an angle (Figure 6) relative to an offset blower 27.

To have used such a heat exchanger construction as taught by DT '451 with tubes oriented in the direction of airflow as the heat exchanger 28, in JP '049, would have been obvious to one of ordinary skill in the art.

Similarly, to have used Nagao's heat exchanger 2 in JP '049 so that air flow occurred in the direction of the tubes (as taught by Nagao) would have been obvious to one of ordinary skill.

Claims 2, 5, 6 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 2, 5, 6 and 9-11 above, and further in view of Netherlands 166433.

To have installed JP '049 in the center of the vehicle (as taught by Netherlands '433) would have been obvious in vehicles to avoid taking up too much room in the lateral (right-left) direction. The Examiner also believes that JP '049 is inherently installed in the center of the vehicle. Notwithstanding that belief, Netherlands '433 clearly teaches such placement, *as does JP 59-77918 relied upon above.*

Claims 2, 5, 6 and 9-~~11~~ are rejected under 35 U.S.C. 103(a) as being unpatentable over any of the prior art as applied to claims 2, 5, 6 and 9-11 above, and further in view of Brandecker or Gebhardt or Mullin or Bates or Marsteller.

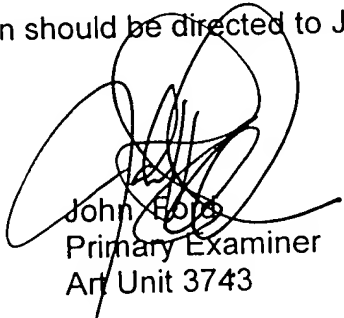
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Each of these references teaches an offset bottom-feed fan and heat exchanger tubes oriented generally parallel to fluid discharged from the fan.

To have oriented the tubes in JP '049/JP ~~'918~~/DT '451 or JP '049/JP ~~'918~~/Nagao to be generally parallel to the fan discharge would have been obvious to one of ordinary skill in the art, to improve air flow.

In addition, Gebhardt at 34, Mullin at 43, Marsteller at 42 and Brandecker at 37 teach drains located under the evaporators of these respective units on the upstream side. To the extent that JP '049 does not meet the limitations as to drain placement specified in claim 9, the Examiner relies on these other (obvious) locations which are advantageously simple and necessary. As a basis for this approach the Examiner relies on the legal precedent of In re Gordon 18USPQ2d 1885 (Fed. Cir. 1991).

Any inquiry concerning this communication should be directed to John Ford at telephone number 703-308-2636.



John K. Ford  
Primary Examiner  
Art Unit 3743

**John K. Ford**  
**Primary Examiner**